IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.1027 OF 2005
WITH
CIVIL APPLICATION NO.1228 OF 2005

Bhimrao Pandu Khot & Ors. ..Appellants.
Vs.
Bhimrao Krishna Khot (Kadam) & Ors. ..
Respondents.

...

Mr. Umesh Malkapure for the Appellants.
Mr. Pratap Patil for Respondent Nos.1 to 5.

....

CORAM : DR.D.Y.CHANDRACHUD, J.

22nd November, 2005.

P.C. :

It is common ground between the learned counsel that during the pendency of the suit before the Trial Court, an order of status quo had operated. The suit was dismissed and during the pendency of the appeal an interim order was passed by the Additional District Judge in the following terms :

> "The petition at Exh. 5 stands allowed.
>
> The appellants and respondents are hereby directed to maintain status quo till disposal of the appeal on merit and more particularly the respondents are hereby restrained from raising barbed wire fencing or raising compound in any way so as to restrain appellants from using and exercising open

> plot precisely described as suit-B property till disposal of the appeal."

The apprehension which has been expressed on behalf of the Appellants is that while there can be no objection to the maintenance of status quo, since the status quo had prevailed during the pendency of the suit, the later part of the interim order may perhaps be misconstrued as allowing the Respondents to take over possession of the suit plot. In response to this submission which has been urged on behalf of the Respondents, it was urged that the Additional District Judge had clarified what the status quo meant in view of the finding in paragraph 8 of the impugned order which is in the following terms :

> "Prima facie it appears that the appellants have no other way out to access to their property barring east-west road and an open plot which has been precisely described as suit B property."

Having heard the learned counsel, in my view, it would be necessary to modify the impugned order of the Additional District Judge so as to clarify that the maintenance of the status quo will only be with respect to the right of way that is claimed by the

Respondents over the open plot of land. In the circumstances, the operative order of the Additional District Judge dated 1st October, 2005 shall stand substituted in terms of the following order of injunction that shall operate during the pendency of the appeal:

"The Appellants and the Respondents are directed to maintain status quo till the disposal of the Appeal and the Respondents are restrained from in any manner restraining the Appellants from seeking access through the east-west road for the purposes of a right of way. "

The Appeal is accordingly disposed of.

In view of the disposal of the Appeal from Order, the Civil Application is rendered infructuous and is accordingly disposed of.